Welcome

MID-ATLANTIC REGIONAL COUNCIL CONFERENCE (MARC)

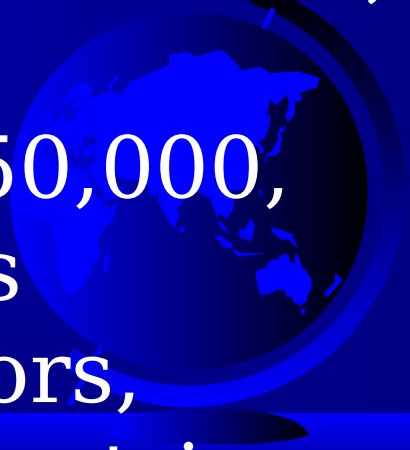
April 7-8, 2010

U.S. Small Business Administration

SUBCONTRACTING PROGRAM

Do you need a Subcontracting Plan?

- If you're a Small Business by definition, no
- If OTSB, and value is over $550,000, $1 million for construction, yes
- Working with foreign contractors, where all work is in foreign countries



"TODAY'S PRESENTATION" SUBCONTRACTING PROGRAM

- Developing an effective Subcontracting Plan, implementing a program to meet contract requirements
- Passing a SBA Program Compliance Review
- DCMA Review Similar

LEGISLATIVE AUTHORITY FOR THE SUBCONTRACTING PROGRAM

- Public Law 95-507

  (amended the Small Business Act, Section 8(d)
- Federal Acquisition Regulation

  (48 CFR, Part 19.7, and the related clauses at 52.219-8 and 52.219-9)
- SBA's regulations:

  (13 CFR 125.3; see also 121.410, Size Standards and 121.411, size and certification)

KEY POINTS: REGULATIONS

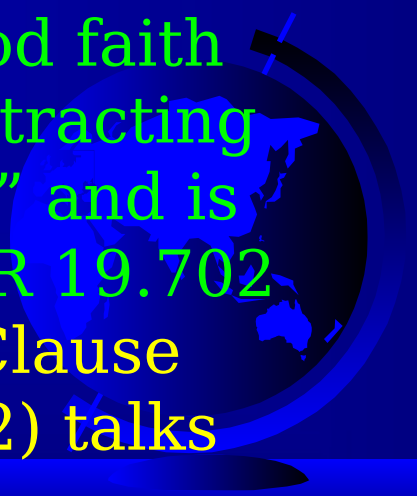
Public law 95-507 amended section 8 (d) of the Small Business Act:

From **“voluntary to mandatory”** and **“best efforts”**

to **“maximum practical opportunities”**

Objective to provide maximum practical opportunity SB, SDB, WOSB, VOSB, SD/VOSB and HUBZone SB

As stated in 15 U.S.C. 637 (d) (8) any contractor or subcontractor failing to comply in “good faith effort” with requirements of the subcontracting plan is in “Material Breach of Contract” and is subject to liquidated damages under FAR 19.702 Statutory Requirements. Also, FAR Clause 52.219-16 as prescribed in 19.708(b)(2) talks about liquidated damages.



FAR PART 19
IMPLEMENTS PROCUREMENT SECTIONS OF THE SMALL BUSINESS ACT

- Subpart 19.1 Policies and procedures for **size standards**
- Subpart 19.7 Policies and procedures for subcontracting with **SB categories**
- Subpart 19.12 Policies and procedures for **SDB** **(Note: A must read)** participation and incentives with SDB concerns.
- Subpart 19.13 policies and procedures

SUBCONTRACTING PLAN ELEMENTS

Element 1: Type of Plan
Element 2: Goals
Element 3: Description of Products or Services to be subcontracted
Element 4: Description or method used to develop goals.
Element 5: Method used to identify sources

SUBCONTRACTING PLAN ELEMENTS (Con't):

Element 8: Equitable Opportunity
Element 9: Flow Down clause
Element 10: Reporting and Cooperation
Element 11: Recordkeeping

Types of Plans

- **Individual Plan** - FAR 19.704(a)
  - requires a separate plan for each contract
- **Master Plan** - FAR 19.704(b)
  - contains no goals, until associated with a contract award
- **Commercial Plan** - FAR 19.704(d)
  - usually company-wide and based on offeror's fiscal year (not the Government's fiscal year)

* **DOD Test Program for Comprehensive Small Business**

Subcontracting Flow-Down

- A subcontracting plan must include a statement that the prime contractor will require all subcontractors (except small businesses) that receive subcontracts in excess of $550,000

  (Recent Change……)

  ($1 million in construction) to adopt a subcontracting plan that complies with the requirements of FAR clause

Subcontracting Flow-Down
(con't)

There is an exemption when the subcontract is for a Commercial item or under a Commercial Plan, per FAR 52.212-5(e) and 52.244-6(c)

The firm holding a Commercial Plan

Subcontracting Flow-Down
(con't)

- The FAR Council is currently addressing an apparent contradiction in the clauses at 52.212-5(e) and 52.244-6(c) that appears to exempt subcontracts for commercial items from one, or both, of these flow-down requirements.

Subcontracting Flow-Down
(con't)

HOW FAR DOES THE FLOW-DOWN GO?

When the subcontract is awarded to a Small Business, *flow-down ends.* However, FAR Clause 52.219-8 "Utilization of Small Business Concerns", demonstrates that it is flowed down until it no longer exceeds Simplified Acquisition threshold and if it offers further subcontracting opportunity.

Subcontracting Flow-Down

Under the flow-down provision, OTSB subcontractors must submit (ISR), SF294 and (SSR) ,SF295 reports just as Prime Contractors. However, they report to the next tier prime above them rather than to the Government. This is for monitoring purposes and continues for all tiers. These numbers **cannot** be counted in meeting top tier Subcontracting Plan Goal Numbers.

REVIEWING THE SUBCONTRACTING PLAN

Who reviews Plans:

Contracting Officers, (final approval) Small Business Utilization Office, and SBA Procurement Center Reps. (PCRs) (advisory comments).

Evaluation criteria will vary from Agency to Agency, but should be evaluating to the **"Elements of a Plan"** in their Evaluation checklists.

NAICS CODES, SIZE STANDARDS AND CERTTIFICATIONS

What is a NAICS Code?

North American Industry Classification System, classifies establishments based on type of business activity in which they are engaged.

Each NAICS has a corresponding size standard:

- Go to: sba.gov/size.
- Reference: 13 CFR, Part 121 and FAR 19.102

NAICS CODES, SIZE STANDARDS AND CERTIFICATIONS (Con't)

What are Certifications?
What is Self-Certification?

An OTSB contracting in good faith my rely on the written representation small business subcontractors

Exception: OTSB contractor must verify Hub- Zone Status in CCR, Dynamic Small Business Search as named in order to count them as part of Goal Achievement (SDB now Self-certifies)

CERTIFICATION (Con't)
REFERENCES

- 13 CFR Overall reference guide
- 121.410 Size, 13 CFR
- 121.411 Tie in of certification, 13 CFR
- SDB FAR 19.703(b)(6)
- FAR Clause 52.219-9 info relates to 121.411
- FAR Clause 52.219-1 Small Business Representations

Note: At this time, there must be a written self-certification from each SB contractor on file with the exception of HUB Zone which is verified in Dynamic Small Business search in Central Contract Registration (CCR) Note: ORCA can only

POST-AWARD SUBCONTRATING RESPONSIBILITIES

The law, the Rules, and Regulation

- Small Business Act as amended, designated the SBA as **principal** government agency responsible for enforcing the provisions of the law pertaining to Subcontracting.
- **Oversight** of the plan by the contracting agency is administered by the Administrative Contracting

HOW SBA MONITORS THE OTSB PROGRAM COMPLIANCE REVIEWS

- <u>Authority:</u>
  Utilization FAR Clause 52.219-8 and Subcontracting
  Plan FAR Clause 52.219-9 which provides SBA with the
  access and legal authority to monitor any subcontracting
  activity at any tier.

- DOD utilizes the DCMA agency to monitor their

THE U.S. SMALL BUSINESS ADMINISTRATION

"COMPLIANCE REVIEW"

- Will the firm receive an Acceptable or higher rating on a SBA or DCMA Compliance Review?

- Does the designated SBLO have full support of management from the CEO down to implement the program requirements?

PROGRAM COMPLIANCE REVIEW EVALUATION CONTENT

- General Company Information
- Sourcing and Needs Assessment
- Validation of contractor's methodology for preparing reports (Previously discussed)
- Five-year Trend Analysis of Goal Accomplishment
- Overall evaluation of contractors Small Business Program (MGT support, Policy, Training, Outreach

PROGRAM COMPLIANCE REVIEW EVALUATION CONTENT

- Sampling of contracts containing Subcontracting
  Plans to determine accuracy **to the elements** and
  achievement of goals.
- Purchase Orders to Large Business (OTSB) , all orders
  $100K or $550,000 (1 million to construction) to
  determine working relationships with Prime. (Flow-

ELECTRONIC SUBCONTRACTING **REPORTING SYSTEM "ESRS"**

Part of the Integrated Acquisition Environment, (IAE)

- Features, Benefits and Improvements
- Contractors input and Responsibility
- Government input and Responsibility

ELECTRONIC SUBCONTRACTING **REPORTING SYSTEM**

FEATURES, BENEFITS AND IMPROVEMENS

- It is web based system that allows electronic submission
- Direct electronic feed from Central Contract Registration (CCR)
- Batch Feed to Federal Procurement Data

ELECTRONIC SUBCONTRACTING REPORTING SYSTEM

FEATURES, BENEFITS AND IMPROVEMENS (Con't)

- Improves accuracy, timeliness and integrity of data exchange
- Eliminates Cost criteria
- Data can be shared by a wider range of communities

ELECTRONIC SUBCONTRACTING **REPORTING SYSTEM** "ESRS"

CONTRACTOR RESPONSIBILITY

- Must now submit their Individual Subcontracting Reports (ISR) and Summary Subcontracting Reports (SSR) replacing old paper SF 294 and SF295's and other mandatory reporting. Provides Management acceptance, revision, or

ELECTRONIC SUBCONTRACTING **REPORTING SYSTEM "ESRS"**

AGENCY RESPONSIBILITY

- Provides immediate contract information
- Accept or reject reporting
- Obtain needed information via individual agency on your agency's Prime

ELECTRONIC SUBCONTRACTING **REPORTING SYSTEM (con't)**

AGENCY USAGE **"ESRS"**

- As a USER in most cases, your access relates to your agency's contracts to see more data than what the Prime Contractor can see.....however
- For Source Selection situations and to determine overall performance of Prime Contractors, utilize a **"SUPER USER"** (PCR OR CMR), who can see all

CONCLUSION

Why a Subcontracting Plan Holder Should Meet Goals And Implement a Program at Their Firms

- Contractual Requirements
- Possible “Liquidated Damages” if requirements are not met
- Agency overall evaluation of all Subcontracting Plan requirements with all agencies when evaluating new contracts. (Source Selection)
- Option year consideration
- Best Value evaluation (heavier consideration on

FREQUENTLY ASKED QUESTIONS

AND YOUR TIME FOR QUESTIONS

THANK YOU

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